

AF/3635  
IRW



IN THE UNITED STATES PATENT OFFICE

In re patent application of:  
Patrick Egan

Application No. 09/633,937

Filed August 8, 2000

PREFABRICATED WALL  
PANELING

) Before the Examiner:  
) Chi Q. Nguyen

)  
) Group Art Unit 3635

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on:

October 9, 2007

Date of Deposit

John H. Allie

Name of Registered Representative

Signature

REPLY TO EXAMINER'S ANSWER

Mail Stop: APEAL BRIEF-PATENTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer dated August 8, 2007 please consider the following reply brief. Additionally, please charge any additional fees which may be due or credit any overpayment to Deposit Account No. 12-2424, but not to include any payment of issue fees.

Applicant respectfully urges the Board of Patent Appeals and Interferences to fully consider his reasoned Appeal Brief and evidence submitted in support of patentability and overrule the Examiner. The Appeal Brief addresses the matters that are discussed in the Examiner's Answer.

Applicant respectfully disagrees with the positions taken in Examiner's Answer. The law is well settled that the Examiner has an obligation to develop an evidentiary basis for their findings. Applicant respectfully argues that the Examiner's answer relies upon conclusory statements without evidencing support thereby violating the obligation of the United States Patent Office to develop a factually supported basis for its findings. One example of this inappropriate course of conduct is the following pronouncement:

[t]o differentiate the well known standard dimension, the applicant preferred to have the overall thickness of 4 1/16" inches instead of 4 9/16" inches. Therefore the claim would have been obvious because a person of ordinary skill has a good reason to pursue the known options with his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

Examiner's Answer, p. 6, ll. 1-16.

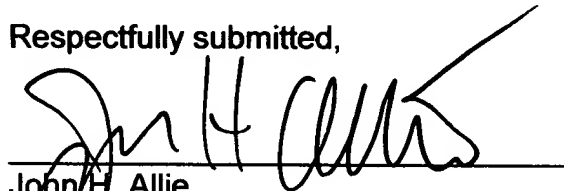
Applicant respectfully argues that the Examiner has not provided a reasoned answer supported by facts to sustain the rejection. Further, within the record there are Declaration's of third parties attesting to the benefits of the present invention and that in there opinion would not be obvious to people in their industry. We ask the members of the Board of Patent Appeals and Interferences to review the declarations of Dave Sheidler and Dave Micham as they consider the Appeal Brief and the positions taken by the Examiner.

The Examiner's Answer continues to evidence that virtually no weight is being given to the Declaration submitted in support of the commercial success of the wall panel system

associated with the present patent application. The Declaration provides a showing of the sales success of the commercial product from the year 2000 through the second quarter of the year 2003. The Declaration was filed with the United States Patent Office in September 2003.

The Board of Patent Appeals and Interferences is respectfully requested to fully consider the Appeal Brief and supporting documentation. After consideration of the material of record the Board of Patent Appeals and Interferences is respectfully requested to take all steps necessary for the withdrawal of the current rejections and allowance of the pending claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John H. Allie", is written over a horizontal line.

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